Supreme Court, U. S.
FILED
MAY 2 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 77-1572

DAVID ROGERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

No.

DAVID ROGERS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, DAVID ROGERS, prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Florida entered in the above captioned case on 30 March 1978. (Said judgment is incorporated herein as Appendix A).

Petitioner's request for stay in the Supreme Court of Florida, in the District Court of Appeal, Second District, and in the Circuit Court of the Sixth Judicial Circuit, in and for Pasco County, Florida, was granted, up to and including 1 May 1978, to allow Petitioner to seek review in the Supreme Court of the United States and to obtain any further stay from this Court. (Order granting stay is incorporated herein as Appendix B).

The Circuit Court, Sixth Judicial Circuit, in and for Pasco County, Florida, entered a judgment on the 29th day

of November 1976, sentencing the Petitioner to a term of 5 years and a fine in the amount of $5,000.00 for a conviction under Count I of the Information for unlawfully bringing into the State of Florida a controlled substance, to-wit: cannabis, in excess of 5 grams, contrary to Chapter 893.13(1)(d) of the Florida Statutes; and, further sentenced the Petitioner to a term of 1 year for a conviction under Count II of the Information for conspiring to bring into the State of Florida a controlled substance, to-wit: cannabis, contrary to Florida Statutes 777.04/Florida Statutes 893.13(1)(d)/Florida Statutes 26.012; Both sentences to be served consecutively. (Said judgment is incorporated herein as Appendix C).

The Appellate Court of the State of Florida, Second District, rendered its affirmed per curiam decision, without opinion, on 15 July 1977, wherein it affirmed the judgment and sentence of the Circuit Court, with its incorporated herein as Appendix D). This is reported at 349 So.2d, page 237.

Petition for rehearing was denied by the District Court of Appeal of the State of Florida, in and for the Second District, on Thursday, 1 September 1977.

Petition for Writ of Certiorari in the Supreme Court of the State of Florida was filed on the 15th day of September 1977, and the Supreme Court, on the 30th day of March 1978, declined to issue said Writ. (The order denying Petition for Writ of Certiorari is incorporated herein as Appendix A). The decision of the Supreme Court of the State of Florida is not yet reported, but the case number is 52,422.

This last order is a judgment of last resort in the State of Florida.

The stage of the proceedings in which the federal

questions sought to be reviewed were first raised were: (1) in the Trial Court by pre-trial Motion for Severance, by Motion for Mistrial after alleged improper remarks by the prosecutor; (2) at the Appellate level, Second District Court of Appeal of Florida by Assignments of Error 3 and 8 as to the denial of the Motion for Severance and Assignments of Error 15 as to the improper remarks of the prosecutor; and (3) on Petition for Certiorari to the Florida Supreme Court in the Jurisdictional Statement.

Thereafter, the Petitioner filed his request for a stay pending Petition for Writ of Certiorari to the United States Supreme Court, which petition is pending with this Court.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3), Title 28 U.S.C.

QUESTION PRESENTED

The first Federal question raised in the Petition is:

POINT I

WHETHER THE STATE TRIAL COURT CAN EXCISE PART OF A CONFESSION OF ONE DEFENDANT BY DELETING DIRECT REFERENCES TO THE OTHER DEFENDANT BUT NOT DELETING INDIRECT REFERENCES WHICH COR-

ROBORATED THE TESTIMONY OF THE ONLY EYE WITNESS PRODUCED AT THE TRIAL.

CONSTITUTIONAL PROVISION INVOLVED

This case presents questions concerning the construction and interpretation of the 6th and 14th Amendments to the United States Constitution, which provide:

6th "***In all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him****"

14th "***nor shall any state deprive any person of life, liberty, or property, without due process of law.****"

STATEMENT

Petitioner was informed against by direct information filed by the State Attorney for the Sixth Judicial Circuit of the State of Florida; Petitioner, together with a co-defendant, were jointly charged under a two count information, with unlawfully bringing into the State of Florida a controlled substance, to-wit: cannabis in excess of 5 grams, in violation of Chapter 893.13(1)(d) of the Florida Statutes and conspiracy to commit such offense.

The case was tried to a jury, which, on the 25th day of July 1976, returned a verdict of guilty as charged as to each count.

Petitioner's motion for a new trial was denied.

The events, sufficient for an understanding of the facts leading to Petitioner's conviction, are as follows:

The incident leading to the Petitioner's arrest occurred on the morning of 24 April 1976 when a local fisherman observed the boat, "Miss Christina", a 20' T-craft, adrift and abandoned in an area known as Fillman's Bayou, a marshy area near Aripeka off the coast of Pasco County, Florida. Floating around the boat were several large packages, which were later identified as marijuana. One of the packages was retrieved by the fisherman and taken onshore and to the home of a deputy sheriff, where it was displayed to him. Other law enforcement officers were alerted and dispatched to the area of Fillman's Bayou, where the boat, "Miss Christina", was found still adrift and abandoned. The assorted bails of floating marijuana were retrieved, together with the boat, and a search was instigated to attempt to locate individuals connected with the "Miss Christina" and the contents found floating in the bayou.

Sometime later that day, after an all-point bulletin was radioed to other participating law enforcement agencies, another T-craft of the same size and length of the "Miss Christina" was found approaching the mouth of the "Pithlachascotee River". This boat was occupied by two white males. It was being operated by one, James Hull, and one William Rozuk. As the T-boat berthed at "Old Pier 19", in Pasco County, Florida, it was discovered that the Florida registration numbers did not match those that were supposed to be on the boat. Neither of the occupants of the boat could give an explanation of ownership or right to the possession or use of the same. During the course of the investigation, a contract of immunity was reached between Mr. Rozuk for his testimony to be used against the Petitioner Rogers and the co-defendant Hull.

Thereafter, Defendant Hull made a full confession in which he implicated Petitioner. Prior to trial, Petitioner moved for a severance because the State intended to use Defendant Hull's confession. The trial Court denied this motion; however, it excised all direct references to Petitioner but left in all indirect references to Petitioner.

At the trial, the witness, Rozuk, testified under the immunity contract for the State of Florida and, in essence, testified that by prearrangement with the Petitioner Rogers, that the witness and the Defendant, James Hull, picked up a T-craft at Astor, Volusia County, Florida, and hauled the boat to Hernando, Florida, where the two stopped in a motel and spent the night. The T-craft was not the "Miss Christina", but one rigged with twin 70 H.P. motors. The next morning, the two continued their trip and put the T-craft into the water at Hudson, Florida, where they were to make contact in the "area of marker 10" and were to identify themselves as "Lurch" and "Jim".

The witness, Rozuk, and the Defendant, Hull, proceeded to marker 10 just before sunset and established contact with another boat. The witness testified that the boat was "near marker 10; I think due South of it." (R-641). The witness further testified that it was approximately 1/2 mile due South of marker 10. This boat was a larger boat approximately 60 to 70 feet in length and was used to unload bales of marijuana into the T-craft. These were then transported by the T-craft onto land. A 68° course was taken by the T-craft to the landing site at Aripeka in Pasco County, Florida, where, upon landing, the two individuals found that it was not the right place. The witness, Rozuk, and the Defendant, Hull, then went back to the boat, "looked at the map to try and figure out from the landmarks where they were supposed to be," went back to shore, and

loaded the boat. The individuals then walked into Aripeka and "found out where we were supposed to be," obtained a canoe, rowed out to where the T-boat had been left on a sandbar, stranded, dislodged it, took it to the drop-off point, and unloaded it. (R-652).

The witness, Rozuk, returned the canoe and the Defendant, Hull, stayed with the T-craft. The two later met, returned to marker 10, where they contacted two other individuals in the other T-craft.

One boat proceeded North and Defendant, Hull, and Rozuk proceeded due South from marker 10. In a short time, they met the larger boat, loaded more bales into the smaller boat, took a 68° course back to land where the bales were unloaded at the same place where the bales were dropped the previous day.

The boat was then washed from the inside and the two individuals proceeded to New Port Richey, where they spent the night.

At this point in time, Hull and Rozuk were advised that something was "amiss". They then proceeded due West from New Port Richey to warn the larger boat that things had gone wrong, but due to bad reception were unable to "contact the larger boat". (R-672).

The two then proceeded back to New Port Richey and upon pulling into the river they were surrounded by police, pulled in, and taken into custody.

At trial, Rozuk testified as to all of his arrangements with Petitioner and he was the only witness called who could implicate Petitioner. Thereafter, the State introduced the confession of Defendant, Hull, which verified most of Rozuk's testimony about Petitioner by indirect reference to his participation in the offense.

The jury returned a verdict of guilty as to each Count of the Information and Petitioner was adjudged guilty and the Motion for New Trial was denied.

SUMMARY OF ARGUMENT

POINT I

The trial Court, by denying the Motion for Severance and then admitting the excised confession denied the Petitioner his right to a fair trial because there was no way that he could cross examine the declarant of the confession and the cautionary instruction was of no avail.

The only testimony linking Petitioner to the offense, other than certain circumstantial evidence regarding his purchase of certain boats, was the immunized witness Rozuk whose testimony must be scrutinized with great caution. The corroborating confession was harmful to the Petitioner under these circumstances.

ARGUMENT AS TO POINT I

In the course of pre-trial discovery, Petitioner learned that the Defendant, Hull, had made a comprehensive statement in which he acknowledged his complicity. In his confession, he incriminated Rogers in numerous events and at the same time, his recitation corroborated much of the statement given by Rozuk under his immunity arrangement. Therefore, Petitioner filed his Motion for Severance and Separate Trial based upon the representation that he would

not receive a fair trial and that no cautionary instruction would aid in protecting his right to a fair trial. (R-3). This Motion was denied by the Court. (R-4).

Prior to the introduction of Hull's confession at the trial, a proffer of the testimony of Lynn A. Wagner was made in chambers. One of the purposes of the proffer related to the denial of the Motion for Severance and was to show that the testimony of Wagner had been excised and cleaned up so that there was no direct reference to Rogers. Appellant objected to the proffer (R-157, 159, 161) but it was admitted with the instruction to the jury that it was not to be considered with respect to Petitioner Rogers. (R-169-170, 191).

Now that the trial is over, it is necessary to review the case to determine if the admission of Hull's statement denied Rogers a fair and impartial trial. Prior to 20 May 1968, the general rule in force in cases in which one of the defendants had made a confession was that it was admissible with an instruction to the jury to disregard any reference to the other defendant and not consider the confession as to the other defendant. On 20 May 1968, this Court rendered its decision in *Bruton v. United States*, 391 U.S. 123, 88 S. Ct. 1620, 20 L.Ed. 476. The import of the decision was that the introduction of a confession of a co-defendant violated the other defendants rights of cross-examination of witnesses against him and therefore deprived him of a fair trial, for, as was held in the majority opinion:

> "***Nevertheless, as was recognized in Jackson v. Denno, supra, there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations

of the jury system cannot be ignored. Compare Hopt v. People of Utah, supra; Throckmorton v. Holt, 180 U.S. 552, 567, 21 S. Ct. 474, 480, 45 L.Ed. 663; Mora v. United States, 5 Cir., 190 F.2d 749; Holt v. United States, 10 Cir., 94 F.2d 90. Such a context is presented here, where the powerfully incriminating extrajudicial statements of a codefendant who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial. Not only are the incriminations devastating to the defendant but their credibility is inevitably suspect, a fact recognized when accomplices do take the stand and the jury is instructed to weigh their testimony carefully given the recognized motivation to shift blame onto others. The unreliability of such evidence is intolerably compounded when the alleged accomplice, as here, does not testify and cannot be tested by cross-examination. It was against such threats to a fair trial that the Confrontation Clause was directed. Pointer v. State of Texas, supra. (391 U.S. at 135, 136).

In 1969, this Court again visited the question of a confession by a co-defendant and, in so doing, modified the automatic reversal rule of *Bruton.* This was *Harrington v. California*, 1969, U.S. 250, 89 S. Ct. 1726, 23 L.Ed.2d 284. In this case, three of the co-defendants had made confessions. Harrington had made certain statements which likewise implicated him in the offense. In addition, one of the co-defendants testified and he was cross-examined by Harrington's attorney. The Court was called upon to determine if failure to invoke the *Bruton* rule was error. Because several eye witnesses placed Harrington at the scene and apparently testified that he was an active participant, the Court held, in the majority opinion:

> "***Our decision is based on the evidence in this record. *The case against Harrington was not woven*

> *from circumstantial evidence. It is so overwhelming that unless we say that no violation of Bruton can constitute harmless error, we must leave this state conviction undisturbed.*" (Emphasis added).

Harrington now appears to be the law governing confessions by a co-defendant. It therefore becomes necessary to review what happened at trial to see if error was committed.

A review of the Hull confession as recited by Mr. Wagner (R-169 forward) although excising any direct reference to Rogers, still corroborated numerous statements of Rozuk. Once the jury heard that Hull worked for Rogers' company, that they picked up a T-craft in Daytona Beach and that they received $1,400.00 in Ormond Beach from a lady, it did not require any strain of the intellect of any one in the Courtroom (least of all the jury) to conclude that the other man being discussed was the Petitioner, David Rogers. Because Hull did not testify, there was no way to cross-examine his statements or confront Hull with what Wagner said he said.

It is impossible for this Court to determine whether or not the jury followed the Court's instruction not to consider Hull's confession against Rogers. As the Court said in *Bruton*, supra:

> "***Here the introduction of Evans' confession posed a substantial threat to petitioner's right to confront the witnesses against him, and this is a hazard we can not ignore. Depsite the concededly clear instructions to the jury to disregard Evans' inadmissible hearsay evidence inculpating petitioner, in the context of a joint trial we cannot accept limiting instructions as an adequate substitute for petitioner's constitutional right of cross-examination. The effect is the same as if there had been no instruction at all. ***" (391 U.S. at 137).

Accordingly, Petitioner suggests that his rights under the 6th and 14th Amendments to the Constitution of the United States have been violated by the State of Florida.

QUESTIONS PRESENTED

The second Federal question raised in this Petition is:

POINT II

WHETHER THE COMMENTS OF THE PROSECUTOR DURING CLOSING ARGUMENT TO THE EFFECT THAT TESTIMONY WAS UNCONTROVERTED WERE IMPERMISSIBLE COMMENTS UPON PETITIONER'S FAILURE TO ADDUCE EVIDENCE OR TESTIFY AND THEREFORE VIOLATIVE OF PETITIONER'S RIGHT TO DUE PROCESS UNDER THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND HIS RIGHT AGAINST SELF INCRIMINATION UNDER THE 5TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

CONSTITUTIONAL PROVISIONS INVOLVED

This case presents a question concerning the construction and interpretation of the 5th and 14th Amendments to the United States Constitution, which provide:

5th "No person *** shall be compelled in any criminal case to be a witness against himself ****"

14th "***nor shall any state deprive any person of life, liberty, or property, without due process of law ****"

STATEMENT

See the above statement referring to the above point with the following supplement.

At the trial, Petitioner presented no evidence and he did not testify. During closing argument, on two occasions, the Prosecutor stated that the evidence was uncontroverted. Petitioner's motion for a mistrial was denied by the trial Court.

SUMMARY OF ARGUMENT

Any Defendant has an absolute right to remain silent and to decline to introduce any evidence at a criminal trial. Because this is an absolute right, due process does not permit a Prosecutor to exploit silence at any stage and claim that silence indicates guilt. Nor can a Prosecutor infer silence means guilty by indirect comment upon the Defendant's failure to testify. When such an argument is made, it is error and requires another untainted trial.

ARGUMENT AS TO POINT II

As indicated above, the testimony of Rozuk was that he

and Defendant, Hull, went in the T-carft to a large ship to pick up the bales of marijuana.

During the course of the trial, the State, over objection, was allowed to introduce into evidence testimony that Petitioner had purchased a big boat named the Ventura and that this boat was found in Ft. Meyers a few days after the date of the offense alleged in the Information. No witness identified the Ventura as the mother ship from whence came the marijuana and, in fact, no witness could make such a connection. Of course, the State urged the jury to "infer" that the Ventura was the mother ship because Rogers bought it and when it was found, it was on the west coast of Florida.

As the Record indicates, neither Defendant adduced any evidence at trial. In closing argument of the State, the following statements were made by Mr. Webb:

> "In backtracking and tracing how Rogers put together this little operation, Mr. Tringali stated that he well knew the defendant, Rogers, and that he sold him the Ventura. There are photographs by which he identified the Ventura. He indicated that on or about the twenty-fourth of March. This is significant because it ties in with Mr. Rozuk indicated and stated about what Rogers told him about the big boat. He told it to him on or about the twenty-fourth of March 1976.
>
> And Rogers, once again, stated that he was president of Abaco, and this is put forth by the defendant, Rogers, that he denied his identity on that occasion, the only occasion.
>
> And why is it the only occasion he didn't take any steps to hide his identity when he bought the Ventura?
>
> Ladies and gentlemen, the Ventura never came into the State of Florida. It was never supposed to come into the State of Florida. The Ventura isn't the boat that

> shuttled this marijuana in bales from outside the State of Florida on to the beaches of Aripeka up here. Why should he hide his identity on the Ventura?" (R-194).
>
> * * *
>
> "Ladies and gentlemen, the testimony, *uncontroverted testimony*, has been that the big boat was coming from the west and that they met it at — first saw it at Marker Number 10, which is, of itself, is beyond the territorial waters of the State of Florida." (R-195). (Emphasis added).
>
> * * *
>
> "Suffice to say that Officer Maxwell stated, and *was not controverted*, about Marker 10 was that it was outside the territorial waters of the State of Florida, and that the testimony has been that the boat, big boat, even came out further than that, it was coming into the edge of the State of Florida to unload on to these two crafts." (R-196). (Emphasis added).

If there was any doubt that the big boat was the Ventura, the above recitation eliminates the doubt.

This Court has had an opportunity to dismiss comments upon the failure of a Defendant to testify in *Griffin v. State of California*, 380 U.S. 609, 85 S. Ct. 1229, 14 L.Ed. 106 (1965), rehearing denied, 381 U.S. 957, 85 S. Ct. 1797, 14 L.Ed. 730, which is the leading case on this issue. *Griffin* was charged with and convicted of first degree murder. *Griffin* did not testify at the main trial and the Prosecutor commented upon his failure to testify and the Court charged the jury that it may take that factor into consideration. The majority opinion noted, in discussing the question that:

> "***For comment on the refusal to testify is a remnant of the 'inquisitorial system of criminal justice' *** which the Fifth Amendment outlaws. ****"

The opinion concluded by holding that:

> "***We take that in its literal sense and hold that the Fifth Amendment, in its direct application to the Federal Government and in its bearing on the States by reason of the Fourteenth Amendment, forbids either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." (380 U.S. at 615).

It is therefore clear that no matter how slight is the intrusion by the State upon a defendant's exercise of his right to remain silent, once there is an intrusion, the trial is thereafter tainted. In effect, this should amount to a rule of *per se* reversal. In this cause, no stretch of logic or imagination is necessary and no legal gymnastics must be indulged in to conclude that the statement "uncontroverted testimony" and "was not controverted" was a comment, albeit perhaps unintentional, upon the failure of the Petitioner to testify. It was no different than if the prosecutor had said the Defendant did not produce testimony to overcome the evidence from a state witness.

Accordingly, these statements require a reversal and a new trial.

CONCLUSION

Accordingly, probable jurisdiction should be noted in this case.

Respectfully submitted,

/s/ Selig I. Goldin
Selig I. Goldin
Post Office Box 1251
Gainesville, Florida 32602
(904) 378-1673
Attorneys for Petitioner

CERTIFICATE OF ATTORNEY

I, SELIG I. GOLDIN, hereby certify that I am a member of the Bar of the United States Supreme Court in good standing and was admitted to practice by the Court on 17 September 1973.

/s/ Selig I. Goldin
Selig I. Goldin, Attorney At Law

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original copy hereof has been furnished by mail this 2nd day of May, 1978 to: THE HONORABLE MICHAEL RODAK, JR., Clerk, United States Supreme Court, Washington, D.C., and copies

hereof by personal delivery to: THE HONORABLE SID J. WHITE, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32304; THE HONORABLE ROBERT L. SHEVIN, Attorney General for the State of Florida, The Capitol, Tallahassee, Florida 32304; THE HONORABLE WILLIAM HADDAD, Clerk, Second District Court of Appeal, 1005 E. Memorial Boulevard, Lakeland, Florida 33802; and to: THE HONORABLE JED PITTMAN, Clerk of the Circuit Court, Sixth Judicial Circuit, Pasco County Courthouse, New Port Richey, Florida.

/s/ Selig I. Goldin
Attorney at Law

APPENDIX A

SUPREME COURT OF FLORIDA

THURSDAY, MARCH 30, 1978

DAVID ROGERS,	)	CASE NO.
	)	52,422
Petitioner,	)	
	)	
v.	)	DISTRICT
	)	COURT OF
	)	APPEAL
	)	SECOND
STATE OF FLORIDA,	)	DISTRICT
	)	76-1338
	)	76-1414
Respondent.	)	

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ENGLAND, HATCHETT and KARL, JJ., Concur ADKINS, J., Dissents

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Debbie Causseaux
Deputy Clerk

cc: Hon. William A. Haddad, Clerk
Hon. Joseph E. Pittman, Clerk
Hon. Lawrence E. Keough, Judge
Selig I. Goldin, Esquire
of Goldin & Cates
Richard G. Pippinger, Esquire
Dan R. Warren, Esquire

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

MONDAY, APRIL 17, 1978

DAVID ROGERS	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO.
	)	52,422
STATE OF FLORIDA,	)	DCA-2 NOS.
	)	76-1338 &
Respondent.	)	76-1414

Petitioner's Application for Stay is hereby granted and proceedings in the District Court of Appeal, Second District, and in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, are hereby stayed to and including May 1, 1978, to allow Petitioner to seek review in the Supreme Court of the United States and obtain any further Stay from that Court.

A True Copy

TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court

R

cc: Hon. William A. Haddad, Clerk
Hon. Lawrence E. Keough, Judge
Hon. Joseph E. Pittman, Clerk
Selig I. Goldin, Esquire
Richard G. Pippinger, Esquire
Dan R. Warren, Esquire

1c

APPENDIX C

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY FLORIDA

CASE NUMBER 76-404

STATE OF FLORIDA

VS. ~~SUBSTANTIVE~~ SENTENCE

DAVID ROGERS a/k/a
DANIEL ROBERTS

You, DAVID ROGERS a/k/a DANIEL ROBERTS, being now before the Court, attended by your attorney, SELIC I. GOLDIN, and you having (1) been tried and found guilty of ~~(2) pleaded guilty (3) pleaded nolo contendere~~ to VIOLATION OF FLORIDA COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT (COUNT I)

previously adjudged
the Court ~~Adjudges~~ that you ~~are~~ guilty of said offense, and it is the Sentence of the Law and the Judgment of the Court that you, DAVID ROGERS a/k/a DANIEL ROBERTS, be committed to the custody of the (1) Florida Division of Corrections ~~(2) Pasco County Correction Center (3) confirmed to their custody~~ for a term of five (5) years, with credit for time served of 19 days while awaiting disposition of this case. Sentence is to be consecutive to sentence already imposed on Count II of this case.

and you are further Ordered to pay a fine ~~and Cost~~ in the amount of $ 5,000.00

DONE and ADJUDGED in open Court at New Port Richey, Pasco County, Florida, this the 29th day of November, 19 76, pursuant to Rules 3.670 and 3.700 FCRP.

JUDGE

(Fingerprints, if required by Section 30.31 Florida Statutes)

4 FINGERS TAKEN SIMULTANEOUSLY	LEFT THUMB	RIGHT THUMB	4 FINGERS TAKEN SIMULTANEOUSLY

I hereby certify that the above and foregoing fingerprints on this judgment are the Fingerprints of the defendant, DAVID ROGERS a/k/a DANIEL ROBERTS and that they were placed thereon by said defendant in my presence, in open Court, this the 29th day of November, 19 76, pursuant to Section 30.31

JUDGE

BOOK HH PAGE 0981
RECORD VERIFIED

FM - 21

APPENDIX D

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED DETERMINED.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT JULY TERM, A. D. 1977

DAVID ROGERS,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NOS.
	)	76-1338
STATE OF FLORIDA,	)	and 76-1414
	)	
Appellee.	)	
	)	
JAMES G. HULL, JR.,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO.
	)	76-1339
STATE OF FLORIDA,	)	
	)	
Appellee.	)	

Opinion filed July 15, 1977.

Appeals from the Circuit Court for Pasco County; Lawrence E. Keough, Judge.

Selig I. Goldin of Goldin & Cates, Gainesville, for Appellant Rogers.

Terry Furnell, Clearwater, for Appellant Hull.

Robert L. Shevin, Attorney General, Tallahassee, and Richard G. Pippinger, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM

Affirmed.

HOBSON, A.C.J., SCHEB and OTT, JJ., CONCUR.